

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gunnar G. & Marian Pedersen :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1977. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Gunnar G. & Marian Pedersen, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gunnar G. & Marian Pedersen
22 Rioux Ct., RD #6
Clifton Park, NY 12065

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
21st day of August, 1985.

David Parchuck

James A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

August 21, 1985

Gunnar G. & Marian Pedersen
22 Rioux Ct., RD #6
Clifton Park, NY 12065

Dear Mr. & Mrs. Pedersen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GUNNAR G. PEDERSEN AND MARIAN PEDERSEN	:	: DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

Petitioners, Gunnar G. Pedersen and Marian Pedersen, 22 Rioux Ct., RD #6, Clifton Park, New York 12065, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1977 (File Nos. 34569 and 34570).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building #9, Albany, New York on March 11, 1985 at 1:15 P.M. Petitioner Gunnar G. Pedersen appeared pro se and for his wife, Marian Pedersen. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

- I. Whether a petition was timely filed by petitioners.
- II. Whether petitioners were New York State resident individuals at the time they sold real property situated in the State of New Jersey.

FINDINGS OF FACT

1. Petitioners, Gunnar G. Pedersen and Marian Pedersen, timely filed a New York State Income Tax Resident Return for the year 1977 under filing status "Married filing separately on one Return". In conjunction therewith, each petitioner filed a Schedule for Change of Resident Status, form CR-60.1. On

said schedule filed by Mr. Pedersen he reported his period of residence in New York as "from January 1, 1977 to December 31, 1977" and the number of whole months as a New York resident as "12". On said schedule filed by Mrs. Pedersen no entries were made on Part III with respect to her 1977 period of New York residence. On their return, petitioners reported their entire Federal income as being subject to New York State personal income tax with the exception of a small amount of wages and a long term capital gain derived from the sale of real property situated in New Jersey.

2. On March 19, 1981, the Audit Division issued a Statement of Audit Changes to petitioners whereon adjustments were made conforming the amounts reported for wages and capital gains to those reported for Federal purposes. Additionally, minimum income tax was imposed on that portion of the capital gain determined to be an item of tax preference. Accordingly, two (2) notices of deficiency were issued against petitioners on April 1, 1981. One such notice asserted additional personal income tax of \$514.81 against petitioner Gunnar G. Pedersen, plus interest of \$128.76, for a total due of \$643.57. The other notice asserted additional personal income tax of \$195.30 against petitioner Marian Pedersen, plus interest of \$48.85, for a total due of \$244.15.

3. The aforestated Statement of Audit Changes bears an Audit Division stamp which reads "AG5, May 26, 1981 Protest, A616". Petitioners argued that this stamp evidences their filing of a timely petition. They further argued that their accountant had filed an amended 1977 return subsequent to their receipt of the notices of deficiency; however, the record contains no indication that such amended return was, in fact, filed.

4. The long term capital gain at issue was derived from petitioners' sale of a vacant lot in New Milford, New Jersey on September 7, 1977. Petitioner Gunnar G. Pedersen alleged that his wife was a resident of New Jersey at the time of said sale and accordingly, her share of the gain is not subject to New York State personal income tax. The long term capital gain derived from said sale was \$16,017.00. Petitioners also contended that their dividend and interest income was overstated on their New York return, however, no evidence was presented to support such contention.

5. Petitioner Gunnar G. Pedersen admitted to being a New York State resident as of March 14, 1977. On said date he allegedly rented an apartment in New York and commenced employment in New York. He contended that his wife continued to be domiciled in New Jersey, residing, until November 21, 1977, in a house which they jointly owned.

6. The vacant lot sold was contiguous to the property on which petitioners' New Milford, New Jersey home was situated. Said lot was sold for the purpose of raising capital for the down payment on a house in Clifton Park, New York, which was purchased by petitioners in mid November, 1977. On November 22, 1977 petitioners moved into the New York house. The New Jersey house was then converted to rental property.

7. Petitioners submitted documentation evidencing that their son, Steven, entered school in Clifton Park, New York "on November 28, 1977 in Grade 7 and graduated from this high school in June, 1983".

8. The wages omitted on petitioners' New York New York return were received by Mrs. Pedersen prior to November 22, 1977. On the Statement of Audit Changes, said wages of \$80.00, which were derived from a New Jersey employer, were erroneously attributed to Mr. Pedersen.

CONCLUSIONS OF LAW

A. That section 689(b), of the Tax Law provides, in pertinent part, that:

"Within ninety days...after the mailing of the notice of deficiency authorized by section six hundred eighty-one, the taxpayer may file a petition with the tax commission for a redetermination of the deficiency."

B. That the Audit Division's stamped acknowledgement of protest on the Statement of Audit Changes (see Finding of Fact "3", supra) establishes that a timely petition was filed by the petitioners herein. The date of the acknowledgement was 55 days after the Notice of Deficiency was issued.

C. That petitioner Gunnar G. Pedersen was a resident of the State of New York at the time the New Jersey property was sold. Accordingly, his share (one half) of the capital gain derived from said sale is taxable for New York State purposes.

D. That petitioner Marian Pedersen was a resident of the State of New Jersey at the time said property was sold. Accordingly, her share (one half) of the capital gain derived from said sale is nontaxable for New York State purposes.

E. That the adjustment attributing additional wages of \$80.00 to petitioner Gunnar G. Pederson is cancelled (see Finding of Fact "8", supra).

F. That the petition of Gunnar G. Pedersen and Marian Pedersen is granted to the extent provided in Conclusions of Law "B", "D" and "E", supra, and except as so granted said petition is, in all other respects denied.

G. That the Notice of Deficiency issued against petitioner Gunnar G. Pedersen on April 1, 1981 is adjusted to be consistent with the decision rendered herein.

H. That the Notice of Deficiency issued against petitioner Marian Pedersen on April 1, 1981 is cancelled.

DATED: Albany, New York

AUG 21 1985

STATE TAX COMMISSION

Richard Allen
PRESIDENT

Frank R. Kory
COMMISSIONER

Mark Juch
COMMISSIONER